

IN THE SUPREME COURT OF THE STATE OF MONTANA
 NO. DA 09-0322

PLAINS GRAINS LIMITED PARTNERSHIP, a
 Montana limited partnership; PLAINS GRAINS, INC., a
 Montana corporation; ROBERT E. LASSILA and
 EARLYNE A. LASSILA; KEVIN D. LASSILA and
 STEFFANI J. LASSILA; KERRY ANN (LASSILA)
 FRAZER; DARYLE E. LASSILA and LINDA K.
 LASSILA; DOROTHY LASSILA; DAN LASSILA;
 NANCY LASSILA BIRTHWISTLE; CHRISTOPHER
 LASSILA; JOSEPH W. KANTOLA and MYRNA R.
 KANTOLA; KENT HOLTZ; HOLTZ FARMS, INC., a
 Montana corporation; MEADOWLARK FARMS, a
 Montana partnership; JON C. KANTOROWICZ and
 CHARLOTTE KANTOROWICZ; JAMES FELDMAN
 and COURTNEY FELDMAN; DAVID P. ROEHM and
 CLAIRE M. ROEHM; DENNIS N. WARD and
 LaLONNIE WARD; JANNY KINION-MAY; C LAZY J
 RANCH; CHARLES BUMGARNER and KARLA
 BUMGARNER; CARL W. MEHMKE and MARTHA
 MEHMKE; WALTER MEHMKE and ROBIN
 MEHMKE; LOUISIANA LAND & LIVESTOCK,
 LLC., a limited liability corporation; GWIN FAMILY
 TRUST, U/A DATED SEPTMENT 20, 1991; FORDER
 LAND & CATTLE CO.; WAYNE W. FORDER and
 DORTHY FORDER; CONN FORDER and JEANINE
 FORDER; ROBERT E. VIHINEN AND PENNIE
 VIHINEN; VIOLET VIHINEN; ROBERT E. VIHINEN,
 TRUSTEE OF ELMER VIHINEN TRUST; JAYBE D.
 FLOYD and MICHAEL E. LUCKETT, TRUSTEES OF
 THE JAYBE D. FLOYD LIVING TRUST; ROBERT M.
 COLEMAN and HELEN A. COLEMAN; GARY
 OWEN and KAY OWEN; RICHARD W. DOHRMAN
 and ADELE B. DOHRMAN; CHARLES
 CHRISTENSEN and YULIYA CHRISTENSEN;
 WALKER S. SMITH, JR. and TAMMIE LYNEE
 SMITH; JERMOME R. THILL; and MONTANA
 ENVIRONMENTAL INFORMATION CENTER, a
 Montana nonprofit public benefit corporation,

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Ed Smith
 CLERK OF THE SUPREME COURT
 STATE OF MONTANA

Appellants,

v.

BOARD OF COUNTY COMMISSIONERS OF
CASCADE COUNTY, the governing body of the County
of Cascade, acting by and through Peggy S. Beltrone,
Lance Olson and Joe Briggs,

Appellees,

And

SOUTHERN MONTANA ELECTRIC GENERATION
and TRANSMISSION COOPERATIVE, INC.; the
ESTATE OF DUANE L. URQUHART; MARY
URQUHART; SCOTT URQUHART; and LINDA
URQUHART,

Appellees/Cross-Appellants.

From the Montana Eighth Judicial District Court
Cause No. BDV-08-480
Honorable E. Wayne Phillips Presiding

**NORTHERN PLAINS RESOURCE COUNCIL INC., TROUT UNLIMITED
INC., NATIONAL WILDLIFE FEDERATION, MONTANA AUDUBON,
THE SIERRA CLUB, CITIZENS FOR CLEAN ENERGY, CITIZENS FOR
A BETTER FLATHEAD, KILA-SMITH LAKE COMMUNITY
DEVELOPMENT COALITION, INC., GREATER YELLOWSTONE
COALITION, MONTANANS AGAINST TOXIC BURNING, AND
BITTERROOTERS FOR PLANNING'S
PETITION TO RECONSIDER ORDER DENYING LEAVE TO FILE AN
AMICUS BRIEF**

APPEARANCES:

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Amici Northern Plains Resource Council, Inc., et al. (Northern Plains) respectfully petition the Court pursuant to Rule 20(1)(d) M.R. App. P. to reconsider its order denying leave for these amici to file an amicus brief. The basis for this Petition is that in assessing timeliness, the incorrect date for filing was used.

In its Order denying Northern Plains leave to file an amicus brief, this Court stated its long-standing rule that amicus briefs must be timely filed. See Order Denying Leave (Nov. 3, 2009). However, the wrong dates to assess timeliness were applied. The dates cited by the Court were for merits briefing. Northern Plains did not seek to participate in merits briefing. Northern Plains sought only to participate in the Motion to Dismiss. Northern Plains timely filed its amicus brief and motion under the rules that this Court applied in concluding that the brief was not timely filed. Northern Plains filed its brief on September 28, one day *before* the responses to the Motion to Dismiss were due.

By this Court's Order dated August 31, 2009, the response brief to the Motion to Dismiss was due September 29, 2009. See Order Granting Extension of Time (Aug. 3, 2009). Northern Plains' brief was filed on September 28, 2009. Southern Montana Electric (SME) then filed its final reply on October 7, 2009, in which it addressed the arguments raised in Northern Plains' and Plains Grains' amicus briefs. This Court's Order Denying Leave to File states that briefing was

“completed by September 29, 2009.” However, that is not correct as to the Motion to Dismiss briefing. The material fact that this Court appears to have inadvertently overlooked is that a separate briefing schedule was set for the Motion to Dismiss, and Northern Plains sought only to participate in that part of the case.¹

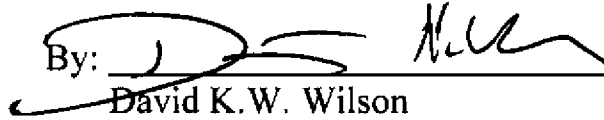
This Court may have confused the proper timing of Northern Plains’ brief with that of the other amicus, National Trust for Historic Preservation. Those amici were participating in the merits briefing. However, this Court set a different schedule for briefing the Motion to Dismiss and Northern Plains complied with that schedule. The fact that Northern Plains, by timely filing its motion and brief, complied with the briefing schedule the Court cited for denying the motion for leave constitutes a “fact material to the decision,” and “conflicts with a controlling decision not addressed by the supreme court,” both grounds for reconsideration. Rule 20(1)(a)(i) and (iii), M. R. App. P.

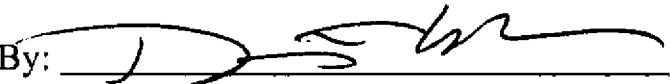
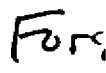
In summary, the proper briefing schedule to measure the timeliness of Northern Plains’ motion was the briefing schedule on the Motion to Dismiss. By that measure, Northern Plains timely filed its brief. Northern Plains recognizes that petitions for reconsideration are not favored. However, the amici here represent

¹ For example, in its brief, Northern Plains stated its “request that this Court deny the motion to dismiss, and clarify that a stay is not necessary for citizen groups like Plains Grains because such a requirement chills their constitutional rights. *Amici do not brief the merits of the zoning appeal.*” Brief at page 2.

tens of thousands of Montanans who ask that their views be considered by this Court in this very important case. The effort invested in briefing the matter, the fact that the brief was timely filed, and the fact that SME had every opportunity to respond constitutes "exceptional circumstances" justifying leave to file the brief under Rule 20(1)(d), M.R. App. P.

Dated this 9th day of November, 2009.

By: 
David K.W. Wilson
Attorney for Amici Curiae

By: 
Jack R. Tuholske
Attorney for Amici Curiae
For: 

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2004 for Mac is 571, not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

By 

CERTIFICATE OF SERVICE

I certify that on November 9, 2009 a true and correct copy of the foregoing was sent by U.S. mail, first class postage prepaid, to the following:

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